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**Steptoe**  
STEPTOE & JOHNSON LLP

July 14, 2014

**VIA FACSIMILE (312-886-1341), E-FILE, U.S. MAIL**

Maria Guerrero, Field Examiner  
National Labor Relations Board, Region 13  
209 South La Salle Street, Suite 900  
Chicago, Illinois 60604-1443

**RE: SAM'S CLUB: Charge No. 13-CA-129860**

Dear Ms. Guerrero:

Sam's Club appreciates the opportunity to respond to (b) (6), (b) (7)(C) ULP Charge of June 2, 2014, as supplemented by your June 20 correspondence, and as amended on June 30. (b) (6), (b) (7)(C) alleges that: (1) on or about (b) (6), (b) (7)(C) 2014, Sam's Club discharged (b) (6), (b) (7)(C) because of protected activities on behalf of OURWalmart; (2) about six months ago, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) interrogated associates about protected activities, including meetings at their homes; (3) on or about six months ago, (b) (6), (b) (7)(C) interfered with associates' protected activities by telling them that (a) OURWalmart representatives could not visit the Club, and (b) they could not wear OURWalmart t-shirts to work; and (4) in or about December, before Christmas, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) interrogated employees about their protected activities when (b) (6), (b) (7)(C) asked associates about their involvement in OURWalmart.

(b) (6), (b) (7)(C) Charge fails because: (1) Sam's Club did not discharge (b) (6), (b) (7)(C) for any OURWalmart-related activity, but for (b) (6), (b) (7)(C) repeated, profane conduct in front of customers and other associates intended to intimidate and harass (b) (6), (b) (7)(C) coworkers; (2) neither (b) (6), (b) (7)(C) nor (b) (6), (b) (7)(C) ever interrogated (b) (6), (b) (7)(C) or any other associate about his or her protected activities – (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) learned about (b) (6), (b) (7)(C) involvement with OURWalmart only because (b) (6), (b) (7)(C) volunteered it to them; and (3) (b) (6), (b) (7)(C) never told associates that OURWalmart representatives could not visit the Club or that they could not wear OURWalmart t-shirts. However, even if (b) (6), (b) (7)(C) had stated that union representatives could not enter the Club, (b) (6), (b) (7)(C) statement would accurately reflect the Company's lawful solicitation-and-distribution policy and property rights under the Act.

After reviewing the analysis below, we trust you will agree that Sam's Club did not violate the Act as alleged.

(b) (6), (b) (7)(C)

## I. FACTUAL BACKGROUND.

### A. Sam's Club Requires Associates To Maintain A Workplace Free Of Intimidation And Harassment.

Sam's Club, a division of Walmart, consists of a chain of member-based retail stores selling a variety of wholesale products to its customers (known as "members"), including groceries, business supplies, tire services, home and garden products, and at some locations, gas.

Consistent with Walmart's corporate philosophy, Sam's Club expects its associates to act professionally, without intimidation or harassment. For example, Walmart's Statement of Ethics discusses the tenets of Walmart's culture – called the "3 Basic Beliefs" – and Guiding Principles, which help associates "make the right decisions" and "act with integrity." [Tab 1 at 5.] The Statement of Ethics explains that "inappropriate language, gestures, threats of violence, and physical violence will not be tolerated. This kind of behavior creates hostile working conditions, and violates the first of the 3 Basic Beliefs: respect for the individual." [*Id.* at 11.] To ensure associates adhere to these standards, the Statement of Ethics warns that "[a]ppropriate disciplinary action, *up to and including termination*, may be taken against any associate whose conduct violates this Statement of Ethics or applicable laws and regulations, including the Guiding Principles." [*Id.* at 7 (emphasis added).]

Sam's Club maintains Discrimination & Harassment Prevention and Violence-Free Workplace Policies that prohibit profane language or conduct that may intimidate or harass. [Tabs 2-3.] The first Policy forbids "[m]aking offensive comments" and "[l]eering or making offensive gestures." [Tab 2.] The Violence-Free Workplace policy "prohibit[s] any form of violence or threat of violence in or affecting the workplace, other associates, or our customers." [Tab 3.] "This includes, but is not limited to, any conduct or communication (whether direct or indirect) which...harasses, intimidates, bullies, [or] threatens...another person." [*Id.*] Both of these policies warn associates that violations may result in discipline up to and including discharge. [Tab 2 at 3; Tab 3 at 2.]

To help maintain an environment free of intimidation and harassment, Sam's Club's Open Door Communications Policy prohibits retaliation for initiating open-door communications or cooperating in a review of open-door concerns. [Tab 4.] Any associate who retaliates against another associate for open-door communications "will be subject to disciplinary action, up to and including termination." [*Id.* at 2.]

### B. Sam's Club Uses A Progressive, Four-Tier Disciplinary Process.

Sam's Club's Coaching for Improvement Policy provides four levels of progressive discipline: First Written coaching, Second Written coaching, Third Written coaching, and discharge. [Tab 5.] Each coaching remains active for 12 months, and Walmart imposes the next level of discipline if an associate engages in unacceptable behavior during that 12-month period, even if the misconduct differs from that which led to the previous coaching. [*Id.*] As the policy explains, "If your unacceptable job performance or conduct warrants a level of coaching and you have already received a Third Written level of coaching within the 12 months immediately preceding the unacceptable job performance or conduct, you will be subject to termination." [*Id.* at 2.]

**C. (b) (6), (b) (7)(C) Worked At Club 6328 In Cicero, Illinois As A (b) (6), (b) (7)(C).**

(b) (6), (b) (7)(C) started at a Walmart Store in (b) (6), (b) (7)(C) and, on (b) (6), (b) (7)(C) first day, the Company trained (b) (6), (b) (7)(C) on "Wal-Mart Culture." [Tab 6.] On (b) (6), (b) (7)(C) third day, (b) (6), (b) (7)(C) received training on what constitutes "Inappropriate Behavior." [Id. at 2.] Throughout (b) (6), (b) (7)(C) employment, (b) (6), (b) (7)(C) continued to receive "Computer Based Learning" on Company policies and practices. [Id.]

A few years later, (b) (6), (b) (7)(C) transferred from the Walmart Store to Sam's Club 6325 as a (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) moved to the (b) (6), (b) (7)(C) position shortly thereafter. (b) (6), (b) (7)(C) held that position until (b) (6), (b) (7)(C) discharge in (b) (6), (b) (7)(C) 2014. As a (b) (6), (b) (7)(C) welcomed members entering the Club, responded to member questions, and monitored the entrance/exit door for signs of theft or loss by reviewing member receipts. [Tab 7.] Sam's Club also required (b) (6), (b) (7)(C) to "[c]ommunicate[] in a respectful and professional manner," "[f]ollow[] company policies and procedures," and "[s]how[] integrity and ethical behavior in all work situations." [Id.]

**D. In (b) (6), (b) (7)(C) 2013, Sam's Club Issued (b) (6), (b) (7)(C) A First Written Coaching For Poor Attendance.**

On (b) (6), (b) (7)(C), 2013, then (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) to discuss (b) (6), (b) (7)(C) recent attendance problems. (b) (6), (b) (7)(C) explained that, if (b) (6), (b) (7)(C) had another unapproved absence due to three tardy arrivals or an unapproved call out, (b) (6), (b) (7)(C) would be disciplined under the attendance policy. [Tab 8.] On (b) (6), (b) (7)(C) 2013, (b) (6), (b) (7)(C) called out and missed (b) (6), (b) (7)(C) scheduled shift, resulting in an unapproved absence. [Id.] Accordingly, management issued (b) (6), (b) (7)(C) a First Written coaching for Attendance/Punctuality on (b) (6), (b) (7)(C), 2013. [Id.] In (b) (6), (b) (7)(C) Charge, (b) (6), (b) (7)(C) does not challenge (b) (6), (b) (7)(C) First Written coaching.

**E. (b) (6), (b) (7)(C) Poor Job Performance In (b) (6), (b) (7)(C) 2013 Resulted In A Second Written Coaching.**

On (b) (6), (b) (7)(C) 2013, (b) (6), (b) (7)(C) processed a number of members at the exit door in quick succession, and failed to review properly the receipt of a member who left the Club with over \$450.00 in unpaid merchandise. [Tab 9.] (b) (6), (b) (7)(C) poor performance negatively impacted the Club's profitability and inventory, and management gave (b) (6), (b) (7)(C) a Second Written coaching for Job Performance on (b) (6), (b) (7)(C), 2013. [Id.] (b) (6), (b) (7)(C) does not challenge (b) (6), (b) (7)(C) Second Written coaching.

**F. In (b) (6), (b) (7)(C) 2013, (b) (6), (b) (7)(C) Received A Third Written Coaching Because Of A Disrespectful, Profane Outburst Directed At Another Associate.**

(b) (6), (b) (7)(C) had an antagonistic relationship with (b) (6), (b) (7)(C) who frequently worked at the (b) (6), (b) (7)(C) about 25 feet from the Club entrance where (b) (6), (b) (7)(C) worked. On (b) (6), (b) (7)(C), 2013, several associates near the Service Desk overheard (b) (6), (b) (7)(C) talking loudly with a member. While working at the computer at the Service Desk, (b) (6), (b) (7)(C) heard (b) (6), (b) (7)(C) tell the member that "there are a bunch of uncle toms up in here and people all up in the managers' asses, especially that one over there on that computer." [Tab 10.] About the same time, (b) (6), (b) (7)(C) heard (b) (6), (b) (7)(C) ask someone at the Service Desk to relieve (b) (6), (b) (7)(C) so (b) (6), (b) (7)(C) could talk to (b) (6), (b) (7)(C) about "Fucking (b) (6), (b) (7)(C)." [Tab 11.] (b) (6), (b) (7)(C) outburst upset (b) (6), (b) (7)(C) who emailed (b) (6), (b) (7)(C) about it shortly afterward. [Tab 10.]



As a result of (b) (6), (b) (7)(C) harassing and profane comments in front of members and other associates, management issued (b) (6), (b) (7)(C) a Third Written coaching for Respect for the Individual and Profanity on (b) (6), (b) (7)(C), 2013. [Tab 12.] (b) (6), (b) (7)(C) explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to act in a professional, non-threatening, unintimidating manner and show respect to all individuals while on the clock and inside the Club. [Id.] (b) (6), (b) (7)(C) also explained that, if the behavior continued, the next level of action would be discharge. [Id.]

(b) (6), (b) (7)(C) does not challenge (b) (6), (b) (7)(C) Third Written coaching.

**G. (b) (6), (b) (7)(C) Engaged In Further Intimidating And Harassing Behavior In (b) (6), (b) (7)(C), 2013.**

(b) (6), (b) (7)(C) developed another antagonistic relationship with (b) (6), (b) (7)(C) following (b) (6), (b) (7)(C) Third Written coaching. (b) (6), (b) (7)(C) believed that (b) (6), (b) (7)(C) had written a statement supporting management's decision to issue the coaching when, in fact, (b) (6), (b) (7)(C) had not. [Tab 13.] (b) (6), (b) (7)(C) began making threatening statements to (b) (6), (b) (7)(C) and others apparently intended to retaliate against (b) (6), (b) (7)(C) for submitting (b) (6), (b) (7)(C) alleged statement.

On (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) observed (b) (6), (b) (7)(C) looking at (b) (6), (b) (7)(C) while saying "(b) (6), (b) (7)(C) doesn't want to mess with me" and "I'm not the one to mess with." (b) (6), (b) (7)(C) later came by the Service Desk while talking on (b) (6), (b) (7)(C) cell phone and said, "This little (b) (6), (b) (7)(C) does not want to mess with me." [Tab 14.]

That same day, (b) (6), (b) (7)(C) heard (b) (6), (b) (7)(C) refer to (b) (6), (b) (7)(C) as "this little (b) (6), (b) (7)(C)." Some of (b) (6), (b) (7)(C) comments that (b) (6), (b) (7)(C) witnessed included "this little (b) (6), (b) (7)(C) don't know who (b) (6), (b) (7)(C) is messing with," "(b) (6), (b) (7)(C) is older than (b) (6), (b) (7)(C) is," and "I told (b) (6), (b) (7)(C) to take (b) (6), (b) (7)(C) in that office and tell that little (b) (6), (b) (7)(C) not to mess with me." (b) (6), (b) (7)(C) noted that (b) (6), (b) (7)(C) spoke loudly enough for (b) (6), (b) (7)(C) to hear at the Service Desk. Although (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to calm down, (b) (6), (b) (7)(C) replied, "I told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) better get that little (b) (6), (b) (7)(C) cause I don't play with nobody's (b) (6), (b) (7)(C)." [Tab 15.]

(b) (6), (b) (7)(C) reported to management that, after clocking in that day, (b) (6), (b) (7)(C) walked by (b) (6), (b) (7)(C) and said, "(b) (6), (b) (7)(C) doesn't know who (b) (6), (b) (7)(C) messing with." They later walked past each other again, and (b) (6), (b) (7)(C) said, "I already called them on that little (b) (6), (b) (7)(C)." (b) (6), (b) (7)(C) conduct made (b) (6), (b) (7)(C) cry, and (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) supervisor if (b) (6), (b) (7)(C) could speak with (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) behavior made (b) (6), (b) (7)(C) want to quit. [Tab 16.]

**H. Sam's Club Discharged (b) (6), (b) (7)(C) Under The Progressive Disciplinary Policy For (b) (6), (b) (7)(C) Misconduct Directed Toward (b) (6), (b) (7)(C).**

(b) (6), (b) (7)(C) did not work from (b) (6), (b) (7)(C) 2013 through (b) (6), (b) (7)(C) 2014. [Tab 17.] Therefore, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were unable to meet with (b) (6), (b) (7)(C) to discuss (b) (6), (b) (7)(C) inappropriate (b) (6), (b) (7)(C) conduct until (b) (6), (b) (7)(C) 2014. In that meeting, (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) intimidating and retaliatory behavior targeting (b) (6), (b) (7)(C) constituted coachable misconduct, and that (b) (6), (b) (7)(C) already had an active Third Written coaching for engaging in similar misbehavior targeting (b) (6), (b) (7)(C). As a result, they were ending (b) (6), (b) (7)(C) employment with the Company. [Tab 18.] (b) (6), (b) (7)(C) argued that management was "getting (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) affiliation with OURWalmart. (b) (6), (b) (7)(C) explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) discharge had nothing to do with OURWalmart; rather, it resulted from (b) (6), (b) (7)(C) actions in harassing other associates. The managers gave (b) (6), (b) (7)(C) final paycheck and the meeting ended. They designated (b) (6), (b) (7)(C) eligible for rehire on (b) (6), (b) (7)(C) Exit Interview form. [Id.]



**I. Sam's Club Has Disciplined And Discharged Similarly-Situated Associates.**

Since the beginning of 2013, Club 6328 coached three similarly-situated associates for inappropriate workplace conduct, using profanity, and failing to show respect for the individual. [Tab 19.] During the same timeframe, Club 6328 also discharged seven similarly-situated associates who, like (b) (6), (b) (7)(C) engaged in misconduct after reaching the third and final level of the progressive disciplinary policy. [Tab 20 at 1-2.] Sam's Club labels this kind of discharge as "Misconduct With Coachings." [Id.]

**J. (b) (6), (b) (7)(C) Participated In The UFCW's Intermittent Work Stoppage Campaign Around (b) (6), (b) (7)(C) 2012.**

As detailed in Walmart's responses to Charges 16-CA-108394 and 16-CA-113087, the United Food and Commercial Workers International Union ("UFCW"), and its agents/allies, including OURWalmart, orchestrated an "intermittent work stoppage" campaign against Walmart that began in (b) (6), (b) (7)(C) 2012 and continues today. Around (b) (6), (b) (7)(C) 2012, (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) from an OURWalmart bus to inform (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would not be coming to work, and (b) (6), (b) (7)(C) therefore believes that (b) (6), (b) (7)(C) participated in an OURWalmart demonstration around that time.

**K. (b) (6), (b) (7)(C) And (b) (6), (b) (7)(C) Never Ask Associates About Union-Related Activities.**

(b) (6), (b) (7)(C) alleges that, about six months ago, (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) about an OURWalmart BBQ that (b) (6), (b) (7)(C) had held at (b) (6), (b) (7)(C) home. (b) (6), (b) (7)(C) recollection of such a conversation is erroneous. (b) (6), (b) (7)(C) recalls no discussion with (b) (6), (b) (7)(C) about a BBQ or any other kind of meeting at (b) (6), (b) (7)(C) house. In fact, neither (b) (6), (b) (7)(C) nor (b) (6), (b) (7)(C) recalls anything about a BBQ, and they note that six months ago would be an unusual time in the Chicago area to hold a BBQ – typically a summer event. Shortly after (b) (6), (b) (7)(C) 2013, however, (b) (6), (b) (7)(C) did initiate a discussion with (b) (6), (b) (7)(C) about a meeting (b) (6), (b) (7)(C) had organized at (b) (6), (b) (7)(C) house the preceding weekend involving a few former associates and one current Club associate. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had a friendly relationship, and (b) (6), (b) (7)(C) often spoke with (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) life outside the Club. On occasion, (b) (6), (b) (7)(C) mentioned OURWalmart. When (b) (6), (b) (7)(C) volunteered information about OURWalmart, (b) (6), (b) (7)(C) always responded neutrally: (b) (6), (b) (7)(C) neither asked questions about nor commented on the group.

In any event, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) never ask associates about union-related activities. To the contrary, they learn of such activities only when associates volunteer the information. (b) (6), (b) (7)(C) has (b) (6), (b) (7)(C) Club 6328 since (b) (6), (b) (7)(C) except for about a (b) (6), (b) (7)(C) period from (b) (6), (b) (7)(C) 2004 to (b) (6), (b) (7)(C) 2005. In recent memory, only (b) (6), (b) (7)(C) has volunteered union-related information to (b) (6), (b) (7)(C). For example, in 2010 or 2011, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had participated in a demonstration at the Walmart Store in Forest Park when (b) (6), (b) (7)(C) lost (b) (6), (b) (7)(C) job there. Around (b) (6), (b) (7)(C) 2012, (b) (6), (b) (7)(C) also informed (b) (6), (b) (7)(C) that OURWalmart's Dodge Nitro went to (b) (6), (b) (7)(C) house. (b) (6), (b) (7)(C) recalls no other OURWalmart activity that (b) (6), (b) (7)(C) had brought to (b) (6), (b) (7)(C) attention.

In addition to the meeting at (b) (6), (b) (7)(C) house, (b) (6), (b) (7)(C) volunteered other information to (b) (6), (b) (7)(C). For example, before (b) (6), (b) (7)(C) 2013, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that OURWalmart representatives were trying to recruit (b) (6), (b) (7)(C) for Black Friday demonstrations, but (b) (6), (b) (7)(C) does not know if (b) (6), (b) (7)(C) in fact participated and would not have asked to find out. Indeed, (b) (6), (b) (7)(C) believes

that (b) (6), (b) (7)(C) willingness to listen without question or comment was one of the very reasons (b) (6), (b) (7)(C) felt comfortable speaking with (b) (6), (b) (7)(C).

**L. (b) (6), (b) (7)(C) Never Declared That OURWalmart Representatives Were Unwelcome At The Club Or That OURWalmart T-Shirts Were Forbidden.**

(b) (6), (b) (7)(C) alleges that, about six months ago, (b) (6), (b) (7)(C) told associates that OURWalmart representatives cannot visit the Club. (b) (6), (b) (7)(C) would have no need or desire to make such a statement, however, because (b) (6), (b) (7)(C) has not seen any OURWalmart representatives around the Club since (b) (6), (b) (7)(C) 2012. With that said, both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) frequently tell associates – particularly (b) (6), (b) (7)(C) and other (b) (6), (b) (7)(C) who check membership cards at the entrance – that *non-members* may not enter the Club. Management consistently enforces this rule because Club 6328 is a “high theft” location and almost all thefts involve non-members.

Even if (b) (6), (b) (7)(C) had told associates that OURWalmart representatives could not enter the Club for solicitation or organizational purposes, that statement would have complied with the Company’s Solicitation and Distribution of Literature Policy. That Policy makes clear that “[n]on-associate individuals, groups, and organizations, including ...labor organizations and labor-related activists...may not solicit or distribute literature or engage in any demonstration or messaging activity at any time *inside* our facilities.” [Tab 21 (emphasis added).] Management consistently enforces this prohibition against everyone – even church groups and kids selling candy.

In addition, (b) (6), (b) (7)(C) has *not* told associates that they cannot wear OURWalmart t-shirts to work. Again, (b) (6), (b) (7)(C) would have no need or desire to make such a statement because (b) (6), (b) (7)(C) has *never* seen an associate wear an OURWalmart t-shirt to work. Even if an associate had worn an OURWalmart t-shirt, all associates wear vests over their t-shirts, largely making the content of their shirts a non-issue.

**II. LEGAL ANALYSIS.**

**A. (b) (6), (b) (7)(C) Discharge Allegation Fails Because (b) (6), (b) (7)(C) Cannot Establish A Prima Facie Case Of Retaliation Under Wright Line.**

The Board’s traditional *Wright Line* analysis applies to (b) (6), (b) (7)(C) claim that Sam’s Club discharged (b) (6), (b) (7)(C) in retaliation for (b) (6), (b) (7)(C) protected activities on behalf of OURWalmart. Under the *Wright Line* framework, (b) (6), (b) (7)(C) must show that: (1) (b) (6), (b) (7)(C) engaged in protected activity; (2) Sam’s Club knew of the protected activity; and (3) Sam’s Club bore animus toward (b) (6), (b) (7)(C) protected activity. *LM Waste Serv. Corp.*, 357 NLRB No. 194, at \*1 (2011). (b) (6), (b) (7)(C) cannot make this showing.

**1. (b) (6), (b) (7)(C) Did Not Engage In Protected Activity.**

Neither (b) (6), (b) (7)(C) nor the Region identifies the protected activity in which Brown purportedly engaged. If (b) (6), (b) (7)(C) argues that participation in the UFCW’s IWS campaign in (b) (6), (b) (7)(C) 2012 constituted such activity, that argument fails because under well-established Board law the Act does not protect participation in union-orchestrated IWS events. [See Walmart’s Position Statements filed in Charge Nos. 16-CA-108394 and 16-CA-113087, which Sam’s Club attaches for your convenience at Tabs 22-23; a copy of the exhibits will be made available upon request.]

**2. Sam's Club Bore No Animus Toward Brown For Any Purportedly Protected Activity.**

(b) (6), (b) (7)(C) cannot demonstrate that Sam's Club bore any animus toward (b) (6), (b) (7)(C) for engaging in protected activity. First, at no time did management directly or indirectly link (b) (6), (b) (7)(C) coachings or discharge to any OURWalmart activity. See *Volt Info. Sciences*, 274 NLRB 308, 318-19 (1985) (animus not shown where no discussion of employee's protected activities occurred when supervisor took employment actions). Second, (b) (6), (b) (7)(C) cannot establish that Sam's Club treated (b) (6), (b) (7)(C) differently from associates who engaged in similar policy violations. See *Snap-On-Tools, Inc.*, 342 NLRB 5, 7 (2004) (no animus absent evidence that employer treated similarly-situated employees more favorably). To the contrary, Sam's Club has issued similar disciplinary measures to other associates for failing to show respect for the individual and using profanity, and has discharged associates who progressed through each level of discipline in the Coaching for Improvement Policy. [Tabs 19-20.] Third, Walmart's designation of (b) (6), (b) (7)(C) as eligible for rehire weighs against a finding of animus. See *Sam's Club*, 349 NLRB 1007, 1025 (2007) (employer unlikely to have unlawful, anti-union intent when it recommends a discharged employee for rehire).

**B. Sam's Club Discharged Brown For A Legitimate Business Reason, And (b) (6), (b) (7)(C) Cannot Show Pretext.**

Even if (b) (6), (b) (7)(C) could establish a *prima facie* case of retaliation, Sam's Club: (1) acted for a legitimate reason (to maintain a non-threatening, unthreatening workplace in accordance with the Company's ethical standards and policies); (2) treated (b) (6), (b) (7)(C) with restraint and in accordance with the Company's progressive disciplinary process; (3) based its discharge decision directly on (b) (6), (b) (7)(C) intimidating and profane behavior in front of other associates and members; and (4) would have done so absent any protected activity (*i.e.*, Sam's Club treated (b) (6), (b) (7)(C) the same as similarly-situated associates). See *Wright Line*, 251 NLRB 1083, 1088 (1980) (employer can overcome *prima facie* case by demonstrating that it had a legitimate business reason and would have taken the same action even in the absence of protected activity). Indeed, none of the misconduct for which Walmart coached and discharged (b) (6), (b) (7)(C) involved protected activity of any kind.

The Board consistently holds that an employer may lawfully discipline and discharge employees who violate company policy, harass coworkers, and use profanity in the workplace. See, e.g., *CF Taffe Plumbing Co., Inc.*, 357 NLRB No. 165, \*16 (2011) (text messages to fellow employee stating "Keep talking your shit and see what I do" and "Your days are over starting tomorrow" threatened physical violence, and thus were "the type of conduct for which any employer would discharge an employee"); *Nat'l Sec. Technologies, LLC*, 356 NLRB No. 183, at \*1, \*6, \*15 (2011) (employer lawfully took employment action against union supporter who had a history of creating a hostile work environment and harassing fellow employees); *Bridgestone Firestone S. Carolina*, 350 NLRB 526, 530 (2007) (employer lawfully disciplined employee for using "profane language in a threatening tirade" toward coworkers and would have done so absent protected conduct); *Fixtures Mfg. Corp.*, 332 NLRB 565, 566 (2000) (reversing ALJ's finding that employer unlawfully disciplined employees who used profanity in violation of anti-harassment policy despite *prima facie* evidence of employer's hostility toward union); *TNT Skypak, Inc.*, 312 NLRB 1009, 1010-11 (1993) (finding company would have discharged employee for using profanity – "They're all stupid mother fuckers. I don't give a fuck if they



hear me” – even in the absence of his union activities). *See also Tenneco Packaging, Inc.*, 337 NLRB 898, 899 (2002) (Liebman, M., concurring) (“Employers justifiably are more concerned today than ever about workplace violence and they must remain free to quickly address genuine threats. The Board’s sound policy is not to second-guess well-intended employer efforts to provide a safe workplace.”).

The Board also holds that an employer may discharge employees who reach the last step in the employer’s disciplinary system. *See Beverly Health & Rehab. Servs., Inc.*, 346 NLRB 1319, 1324-25 (2006) (employer lawfully discharged employee “in accordance with its progressive disciplinary policy”).

Finally, (b) (6), (b) (7)(C) cannot show that Sam’s Club’s reason was a pretext for unlawful retaliation. *See Jordan Marsh Stores Corp.*, 317 NLRB 460, 476 (1995) (employee must demonstrate the employer’s reason amounted to mere pretext). Specifically, (b) (6), (b) (7)(C) can offer no reason to disbelieve Walmart’s well-supported reasons for disciplining and discharging (b) (6), (b) (7)(C). *See Keco Indus., Inc.*, 271 NLRB 634, 637 (1984) (no inference of discriminatory motive where no evidence exists that employer treated charging party differently from similarly-situated employees); *Praxair Distrib., Inc.*, 357 NLRB No. 91, at \*22 (Sept. 21, 2011) (no evidence of pretext when employer provided substantial evidence that it consistently and uniformly applied its disciplinary policy). Accordingly, (b) (6), (b) (7)(C) cannot establish a retaliation claim.

**C. (b) (6), (b) (7)(C) And (b) (6), (b) (7)(C) Did Not Unlawfully Interrogate Associates.**

The Board analyzes “interrogation” allegations under the seminal *Rossmore House* decision. 269 NLRB 1176, 1177 (1984).<sup>1</sup> There is no need for a *Rossmore* analysis here, however, because neither (b) (6), (b) (7)(C) nor (b) (6), (b) (7)(C) ever asked (b) (6), (b) (7)(C) or any other associate about any union activities relating to OURWalmart or otherwise. To the extent (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) learned of an OURWalmart Dodge Nitro visit or an associate meeting at (b) (6), (b) (7)(C) home, (b) (6), (b) (7)(C) simply volunteered that information to management.

**D. (b) (6), (b) (7)(C) Did Not Interfere With Any Associate’s Protected Activities.**

The Board evaluates an employer’s statement under Section 8(a)(1) by asking if, under the totality of circumstances, the statement “may reasonably be said...to interfere with the free exercise of employee rights under the Act.” *Am. Freightways Co.*, 124 NLRB 146 (1959). Again, there is no need for an *American Freightways* analysis here because (b) (6), (b) (7)(C) never told associates that OURWalmart representatives could not visit the Club or that associates could not wear OURWalmart t-shirts.

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<sup>1</sup> “Among the factors considered in determining whether an interrogation is unlawful are: (1) the background of the questioning (*i.e.*, is there a history of employer hostility to the union activity), (2) the nature of the information sought (*i.e.*, did the supervisor seek information on which to base adverse action against individual employees?), (3) the identity of the questioner (*i.e.*, how high up in the chain of command?), (4) the place and method of the questioning (*i.e.*, was the employee called from work to the boss’s office? Was there an atmosphere of unnatural formality?), and (5) whether the person being questioned is an open and ardent union adherent.” *Id.* *See also Webco Indus.*, 334 NLRB 608, 621 (2001) (interrogation lasting a few minutes with open and active union adherent not unlawfully coercive).


Assuming (b) (6), (b) (7)(C) made a statement about OURWalmart representatives, (b) (6), (b) (7)(C) interference allegation still fails. First, the Board consistently upholds the legality of statements that directly reference Section 7 rights so long as those statements contain no threat of reprisal or promise of benefit. See, e.g., *Atlas Logistics Grp. Retail Servs. (Phoenix) LLC*, 357 NLRB No. 37, at \*1, \*5 (2011) (supervisor did not violate Act by making “belittling” remarks toward union and calling employees who sought union assistance “liars” because statements did not contain implicit or explicit threats); *Noah’s New York Bagels, Inc.*, 324 NLRB 266, 267 (1997) (employer may lawfully ask employees to refrain from exercising Section 7 rights so long as the employer does not couple the request with a promise of a benefit or threat of reprisal). Here, (b) (6), (b) (7)(C) makes no allegation that (b) (6), (b) (7)(C) statement contained such a threat or promise.

Second, the U.S. Supreme Court has made clear that an employer does not violate the Act by barring union representatives engaging in organizational activities on its property when those representatives otherwise have reasonable access to the employees. *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992). Hence, Sam’s Club’s policy (which Club 6328 has consistently enforced) and (b) (6), (b) (7)(C) alleged statement of that policy did not interfere with anyone’s rights under the Act.

### III. CONCLUSION.

For the foregoing reasons, Sam’s Club did not violate the Act as alleged, and the Company respectfully requests that the Region dismiss the Charges absent withdrawal. Please contact us with any questions or if you require additional information.<sup>2</sup>

Kind regards,

  
Lawrence Allen Katz  
Aaron J. Lockwood

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<sup>2</sup> As requested, Sam’s Club provides (b) (6), (b) (7)(C) personnel file at Tab 24. Sam’s Club submits the information in this letter for the sole purpose of resolving (b) (6), (b) (7)(C) Charge. Sam’s Club specifically reserves all rights and defenses (including procedural and *Noel Canning* issues) that it now has or may later possess concerning the Charge or related issues. Sam’s Club further requests that the NLRB keep all information related to this Charge confidential to the fullest extent permitted by law.

**TAB 1**





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## A message from our Chief Executive Officer

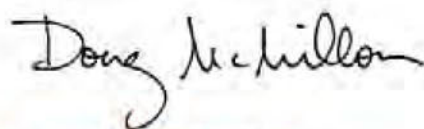
**Doug McMillon, CEO**

Our unique culture drives our purpose of saving people money so they can live better, and the foundation of that culture is our commitment to operating with integrity. Even as we change to meet the needs of our customers, Walmart will stay true to the values, beliefs and behaviors that have guided us for the last 50 years.

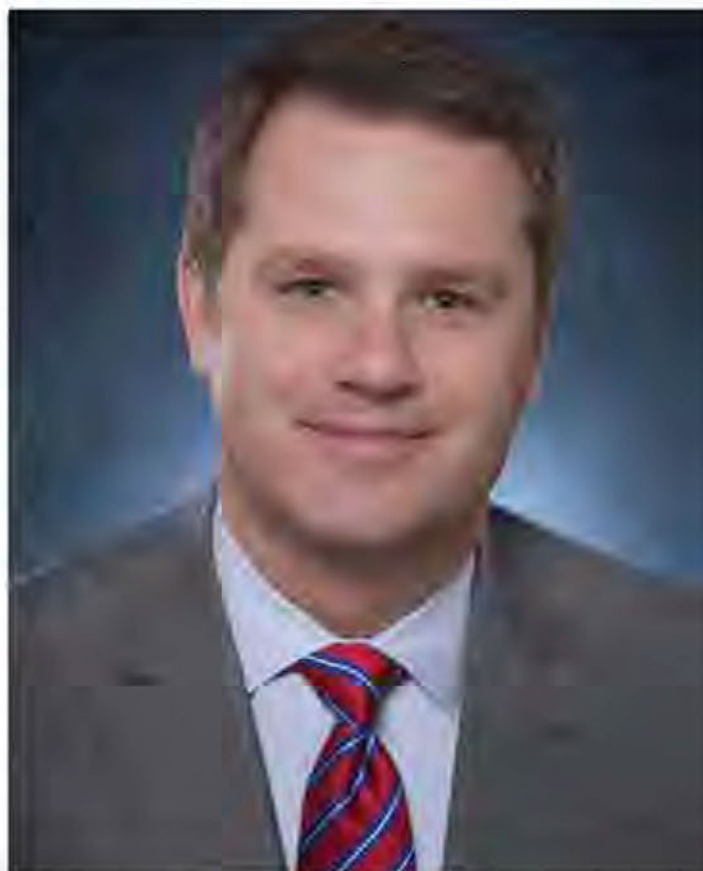
Regardless of where you are in our global company, this Statement of Ethics is your guide to exemplifying integrity as a Walmart associate. It's a daily resource for helping you make honest, fair and objective decisions while operating in compliance with all laws and our policies.

Through your ethical behavior and willingness to speak up for the highest standards, we earn and keep the trust of our customers, each other and our local communities. We believe in everyday low cost and everyday low prices, but only if accomplished through your everyday integrity.

Thank you for your commitment to our Statement of Ethics. It means more than making ethical decisions; it demonstrates you care about Walmart, our reputation and our customers.



**Doug McMillon**  
**President and CEO**  
**Wal-Mart Stores, Inc.**





## Using the Statement of Ethics

This Statement of Ethics is going to introduce you to the types of attitudes and conduct that create an honest, fair, and legal workplace. You're going to learn how to recognize situations that might come up on your job that could be a violation of our company ethics. Plus, you'll learn what to do if you have any questions or concerns about what is correct and ethical conduct. Our 3 Basic Beliefs and Guiding Principles at the beginning of this Statement of Ethics will give you a general idea of correct company ethics. But, remember no guide or manual can give you a complete set of rules. So, in the end, we all must trust our own good judgment of right and wrong.

### How the Statement of Ethics is organized

- Inside the front cover is a letter from Doug McMillon, our president and CEO of Walmart. He points out how important it is for all of us to follow our Statement of Ethics, and how important it is to report anything we feel might be a violation of those ethics.
- On the next page are our Guiding Principles. These are a good starting point as a set of guidelines for ethical behavior.
- The Introduction section explains that it's your responsibility to comply with our Statement of Ethics and to report what you feel might be any violation of policy or law.
- The section Raising Concerns & Speaking Up tells you how to request an opinion before you take action and how to report what you think might be a violation of ethics, including a way to make a report in private and without giving your name.
- This guide gives you an overview of many policies. Some commonly asked questions are included to help explain each policy better. There are also examples of how this Statement of Ethics and other Walmart policies apply in all countries.

### Global policies and local laws

Each business organization Walmart operates is expected to have a complete set of policies providing guidance to associates for whatever country they are working in. Walmart also publishes several "global policies," which are designed to give associates a set of rules that are the same for all locations. This Statement of Ethics is an example of a global policy.

If any part of this Statement of Ethics goes against local policies or laws, then the local policy or law must always be followed. It's our responsibility to know all of the local laws and policies that might affect our area of business. If you're not sure about any local laws or policies, please talk to your manager, the Walmart in-country Legal Department, or the Global Ethics Office.

Some local laws, practices, or even local customs could be more relaxed than our Statement of Ethics. If you find yourself in this kind of situation, you should always rely on our Statement of Ethics.

## Our 3 Basic Beliefs

Since Sam Walton founded Walmart, it has always been a values-based, ethically led company. The values that guide our decisions and our leadership are the 3 Basic Beliefs:

1

**Respect for the individual**

2

**Service to our customers**

3

**Striving for excellence**

---

## Vision statement

The vision of the Global Ethics Office is to promote ownership of Walmart's ethical culture to all stakeholders globally.



### Guiding principles

These principles are meant to help our associates make the right decisions, and to act with integrity.

- Always act with integrity.
- Lead with integrity, and expect others to work with integrity.
- Follow the law at all times.
- Be honest and fair.
- Reveal and report all information truthfully, without manipulation or misrepresentation.
- Work, actions, and relationships outside of your position with the company should be free of any conflicts of interest (discussed later in this guide).
- Respect and encourage diversity, and never discriminate against anyone.
- Ask your manager or the Global Ethics Office for help if you have questions about this Statement of Ethics, or if you face an ethical problem.
- Promptly report suspected violations of the Statement of Ethics.
- Cooperate with and maintain the private nature of any investigation of a possible ethics violation.
- When involved in an ethics investigation, you should reveal and report all information truthfully. You should present all the facts you are aware of without personal opinion, bias, or judgment.





“A people that values its privileges above its principles soon loses both.”

Dwight D. Eisenhower,  
34th President of the  
United States

## Who's covered by the Statement of Ethics?

### Associates and Directors

This Statement of Ethics applies to all associates worldwide, and all members of the board of directors of Wal-Mart Stores, Inc. It also applies to the associates and directors of all Walmart-controlled subsidiaries.

### Third Parties

Walmart expects its suppliers, consultants, law firms, public relations firms, contractors, and other service providers to act ethically and in a manner consistent with this Statement of Ethics. If you hire a service provider, you should take reasonable steps to make sure the service provider is aware of our Statement of Ethics, has a reputation for integrity, and acts in a responsible manner consistent with our standards.

## What law applies

Walmart conducts business in many countries around the world. Our associates are citizens of many countries and, as a result, our operations are subject to many different laws, customs, and cultures.

The number of laws and regulations around the world that affect Walmart increase and become more complex each year. When it's possible, this Statement of Ethics will be modified to conform to changes in laws and customs. In some instances, the laws of two or more countries will conflict. When you encounter a conflict, contact the Global Ethics Office or your in-country Ethics Committee to understand how to resolve the conflict.

## Associate responsibilities

The following basic obligations apply to all associates:

- Follow the law at all times. If you see any associate violating the law, or if you're asked to do something you believe may violate the law, discuss it immediately with your manager, in-country Ethics Committee, or the Global Ethics Office.
- Read and understand the Guiding Principles and use those principles in your job every day.
- Learn the policies that apply to your job. No one expects you to memorize every policy, but it's good to have a basic understanding of issues covered by each policy.



- Ask for help from your manager, the Global Ethics Office, or other Walmart resources when you have questions about the application of this Statement of Ethics or other policies.
- Immediately raise any concern you, or others, may have about possible requests or acts that may be a violation of this Statement of Ethics or any Walmart policy.
- It's important to understand how to raise ethics concerns. You can raise them with a manager, or by contacting the Global Ethics Office directly. Ways to raise concerns are described in more detail later in this guide. If you raise an ethics concern through a manager and the issue is not resolved, raise it through a different manager or the Global Ethics Office directly.
- Cooperate with and maintain the privacy of any Walmart investigation into violations of this Statement of Ethics, or any other Walmart policy.
- Ensure open communication by encouraging associates in your department or division to ask questions concerning our Statement of Ethics.
- Never cover up or ignore any ethical conduct problem. Address the matter in a timely manner and seek guidance if necessary.
- Appreciate associates who raise issues.
- Never retaliate against anyone for raising an ethics issue, assisting in an investigation, or participating in any proceeding relating to an alleged violation of any applicable government regulations, laws or rules, or an alleged fraud against shareholders.
- Encourage self-reporting of business conduct violations. If an associate voluntarily reports that they were involved in an ethics violation, such self-reporting may be considered when determining the appropriate disciplinary action to be taken.

## Additional responsibilities for management

As a management associate, you're responsible for creating an environment that encourages compliance with Walmart Statement of Ethics. Supervision of responsible business practices is as important as supervision of performance. You should do the following to make sure our company maintains the highest ethics:

- When an ethics issue comes to your attention, contact the Global Ethics Office for assistance.
- Meet with your direct reports as a group periodically to review the Guiding Principles and this Statement of Ethics.
- Where there is a conflict between our ethics and business objectives, our ethics must always come first.
- Lead by example, and encourage your associates to act with integrity in all dealings to avoid even the appearance of a violation of our business standards.
- If an ethics issue arises with one of your associates, make sure other associates in your area are not making the same mistake.

### Discipline for violations

Appropriate disciplinary action, up to and including termination, may be taken against any associate whose conduct violates this Statement of Ethics or applicable laws and regulations, including the Guiding Principles.



“Don’t compromise your reputation. It’s a precious commodity. Don’t compromise your integrity ... have a good name.”

Sam Walton



## Raising concerns and speaking up

All of us should constantly work to maintain a working environment that encourages associates to raise concerns about possible violations of our Statement of Ethics. Often we hear stories of other companies where employees were aware of problems, but did not feel comfortable coming forward. No one should feel that way at Walmart. Please report possible ethics problems immediately so they can be resolved before more serious consequences develop.

## Ethics opinions

In the normal course of business, you might have a situation where you’re not quite sure if there is a violation of ethics, or whether the situation is within the standards described in this Statement of Ethics. When you have any ethics question, you are encouraged to use the Open Door process or contact the Global Ethics Office for a verbal or written opinion before you take any action.

## Waivers and what happens when an ethics concern is raised

### Waivers

Any associate (other than executive officers) can request from the Global Ethics Office a waiver of the applicability of this Statement of Ethics. Ethics waiver requests must be submitted in writing to the Global Ethics Office by the associate, and must contain in detail all of the relevant facts and circumstances supporting the requested waiver. The Global Ethics Office will respond in writing to the associate.

For members of the board of directors and executive officers, requests for waivers of the Statement of Ethics will only be considered by the Audit Committee or by the full board of directors, as the board of directors determines. Members of the board of directors and the chief executive officer must submit their own waiver requests in writing. Written requests must set forth the relevant facts and circumstances supporting the waiver. After receipt and review of the request, the Audit Committee or the board of directors will respond in writing to the requester. Any waivers of this Statement of Ethics granted in favor of members of the board of directors or executive officers will be promptly disclosed to shareholders.

All waiver requests must be approved in advance of the conduct for which approval is sought.

### What happens when an ethics concern is raised

Walmart takes all reported concerns seriously. We will confidentially investigate allegations to determine if any law, policy, or the Statement of Ethics has been violated. If you



report a violation, the Global Ethics Office will make every effort to keep your identity private. We will also work to make sure any data relating to the investigation is kept secure. To assist in privacy, it's important that you do not discuss your concern with others.

If you've raised a concern with management, they will follow up with you in a reasonable amount of time and provide an update on the issue. Specific information regarding investigations is private information, but you will be told the status of the investigation — whether it's active or closed.

## How to raise a business conduct concern

Walmart provides a variety of resources you can turn to when you need to raise a question or concern. Depending on the nature of the concern, it may be easiest to talk to the person responsible directly about your concerns, providing them an opportunity to clarify their conduct. If you don't feel comfortable handling the situation yourself, or if you believe the misconduct involves a legal issue, you should consult one of the following resources:

- **Use the Open Door**

### **Communications process**

The Open Door Communications process is the most direct way to voice any concern to a manager. If you believe your immediate manager is involved in the problem, discuss the issue with the next level of management who is not involved, or use one of the other resources described below.

- **Call the Global Ethics Office**

Walmart has a Global Ethics Helpline, which is available to associates around the world 24 hours a day, seven days a week, and is equipped to handle most local languages. The Helpline is staffed by an organization not affiliated with Walmart, and to the extent possible (and in conformity with local regulations), callers may not have to give their name. In all cases, associate privacy will be respected to the fullest extent possible under the law. The operator will relay the information to the Global Ethics Office, and will provide the associate with a case number and callback date if desired. Global Ethics Office phone numbers are located in the back of this tool.

## Q & A

**If an associate reports a Statement of Ethics violation to the Global Ethics Helpline, is that associate exempt from disciplinary actions for unrelated misconduct?**

Not necessarily. The report made by the associate, and the associate's own misconduct are two separate issues that should be dealt with independent of each other. We are all expected to perform our duties with integrity, respect, and are accountable for our own actions when conducting business for Walmart.

- **Call your local Ethics Committee**

U.S.A., Puerto Rico and Canada = 1-800-WM-ETHIC [1-800-963-8442]

Canada (French) = 1-800-805-9121

(Specific phone numbers for all countries are listed in the back of this tool.)

- **Contact the Global Ethics Office by mail, e-mail, or on the Internet**

### **Mail**

Wal-Mart Stores, Inc.  
Attn: Global Ethics Office  
702 SW 8th Street  
Bentonville, AR 72716-0860

### **E-mail**

[ethics@wal-mart.com](mailto:ethics@wal-mart.com)

### **Internet**

[walmartethics.com](http://walmartethics.com)



“ You can overcome almost anything, but you cannot overcome a lack of integrity.

Lee Scott

”

### Q & A

**I was asked to take a drug test before accepting a promotion into management. Is this standard?**

Where permitted by law, job applicants may be drug screened as part of the post-offer hiring process, or prior to accepting a promotion into management. Any applicant who tests positive for illegal drug use will not be hired or promoted, and may be terminated. In addition, Walmart may require you to submit to drug testing following certain on-the-job injuries or if there's a reasonable basis to suspect you're under the influence of drugs (also only where permitted by law).

**Is there somewhere I can go for help if I have a drug or alcohol problem?**

Walmart operations in some countries provide Helpline-counseling services. Please contact your Human Resources manager or local substance-abuse counseling center for help.

**I'm attending a Walmart-sponsored group/supplier meeting. Alcohol will be served. May I have alcohol while there?**

With executive vice president approval, Walmart-sponsored events may provide alcohol. Associates of legal age may consume alcohol at these events as long as they do not allow it to impair their judgment.

## Leading with integrity in our workplace

### Alcohol & drug abuse

Walmart is committed to a safe and healthy workplace for everyone. The use of alcohol and illegal drugs can create serious safety risks in our workplace. The possession, solicitation, or use of illegal drugs, or being under the influence of such drugs on company time, while on company property, or at any Walmart-sponsored event, is prohibited and will not be tolerated. In some instances, associates may consume alcoholic beverages at company-sponsored events when appropriate monitoring is in place, off Walmart property, and with the appropriate level of approval (your in-country president, your division's executive vice president, or your in-country Ethics Committee). Walmart will take common business practices into consideration in countries where a moderate consumption of alcohol with a meal is common. All associates should ensure their performance and judgment are unimpaired by alcohol consumption during working hours.



## Harassment

We believe in treating each other with respect, whether it's a co-worker, supplier, customer, or anyone doing business with us.

### Harassment:

Any conduct which inappropriately or unreasonably interferes with work performance, diminishes the dignity of any person, or creates an intimidating, hostile, or otherwise offensive work environment.

Verbal, visual, or physical conduct of a sexual nature is not acceptable in the workplace and may be determined to be sexual harassment. Examples include:

- Sexual advances, requests for sexual favors, sexually explicit language, off-color jokes, remarks about a person's body or sexual activities.
- Displaying sexually suggestive pictures or objects, suggestive looks or leering, or suggestive communication in any form.
- Inappropriate touching, both welcome and unwelcome.

## Inappropriate conduct

We believe in maintaining a working environment free of violence or threats of violence. This means inappropriate language, gestures, threats of violence, and physical violence will not be tolerated. This kind of behavior creates hostile working conditions, and violates the first of the 3 Basic Beliefs: respect for the individual.



## Q&A

**A department manager comments regularly about my body. What should I do?**

We encourage you to first tell the person to stop. If you're not comfortable with this, or the activity does not stop, contact your manager through the Open Door process, your Human Resources manager, or the Global Ethics Office immediately.

**Is my desk calendar with occasional sexual jokes appropriate in the workplace?**

It could be offensive to someone else in the workplace. If you're in doubt, remove the item from the workplace.

**An associate used a word in a meeting that is offensive to me. What should I do?**

Speak up and tell the person. Some words are universally offensive but some are not. They might not know the word could be seen as offensive to someone. You can also exercise the Open Door process, contact someone in Human Resources, or the Global Ethics Office.

### Q&A

**I reported an allegation six months ago. Ever since, my manager stopped including me in several meetings. Is this retaliation?**

Significant changes in how you're treated can be viewed as retaliation. If your manager treats you differently since you reported an allegation, you should raise your concern to management through the Open Door process or to the Global Ethics Office.

**One of my associates called the Helpline and made a false claim against me this past year. I think they did it to hurt my career. Can I score them lower on the "Integrity" section of their evaluation since they're obviously trying to spread lies about me?**

We should believe that associates who report concerns do so in good faith. Therefore, taking action against an associate for reporting a concern would be viewed as retaliation, and could result in disciplinary action for you as a manager. Retaliation will not be tolerated at Walmart. It prevents an open reporting environment, and encourages a culture of fear.

**After an associate reported an ethics violation concerning their assistant manager to the Human Resources manager, their assistant manager began tracking all their mistakes. Is this retaliation?**

Any variations from how the assistant manager previously treated the associate, and variations from how they treat other associates could be perceived as retaliation.

**Is protection from retaliation only provided if I report my concerns through the Helpline?**

Retaliation is unacceptable no matter which source you used to raise your concern (through management, Human Resources, or Global Ethics). If you believe you have been retaliated against, please contact one of those sources immediately.

### Non-retaliation

Associates who come forward with concerns play an important role in maintaining a healthy, respectful, and productive workplace, as well as protecting our stakeholders. These associates help our company address problems early — before more serious consequences develop. It's important for each of us to create a working environment where everyone can raise concerns of ethics issues without fear of retaliation.

Retaliation against associates who raise concerns or questions about misconduct in "good faith" will not be tolerated. Good faith means that you have made a genuine attempt to provide honest and accurate information, even if you are later proven to have been mistaken. Walmart reserves the right to discipline anyone who knowingly makes a false accusation or has acted improperly. However, if an associate voluntarily reports that they were involved in a violation, such self-reporting may be considered when determining the appropriate disciplinary action to be taken.

Walmart will not terminate, demote, or otherwise discriminate against associates for raising concerns. Also, it is important for co-workers not to isolate associates who have raised concerns — such employees should be treated with respect. Any change in treatment toward an associate who has raised a concern could be seen as informal retaliation.

Walmart has established a process to deal with retaliation issues. Associates who believe they have experienced retaliation after raising an ethics concern should bring the issue to the attention of their manager, or to the attention of the Global Ethics Office. The helpline can also be used to discuss a retaliation issue.

### Non-discrimination

The first of the three basic beliefs upon which Sam Walton founded our company is "respect for the individual." Each of us is responsible for creating a culture of trust and respect that promotes a positive work environment. This means treating one another with fairness and courtesy in all of our interactions in the workplace.

We are committed to maintaining a diverse workforce and an inclusive work environment. Walmart will not tolerate discrimination in employment, employment-related decisions, or in business dealings on the basis of race, color, ancestry, age, sex, sexual orientation, religion, disability, ethnicity, national origin, veteran status, marital status, pregnancy, or





**Character is power.**

**Booker T. Washington,  
American educator  
(1856-1915)**



any other legally protected status. We should provide an environment free of discrimination to our associates, customers, members, and suppliers.

## Wage and hour

We are committed to complying fully with all applicable laws and regulations dealing with wage-and-hour issues, including off-the-clock work, meal and rest breaks, overtime pay, termination pay, minimum-wage requirements, wages and hours of minors, and other subjects related to wage-and-hour practices. As Walmart associates, we must:

- Comply fully with all corporate policies and procedures related to wage-and-hour issues;
- Comply fully with all applicable federal, state, and local laws and regulations pertaining to wage-and-hour issues;
- Report any violations of wage-and-hour laws or policies to management.

It is a violation of law and Walmart policy for you to work without compensation or for a supervisor (hourly or salaried) to request that you work without compensation. You should never perform any work for Walmart without compensation.

## Q&A

**In the break room, another associate called me a disrespectful name associated with my nationality. What should I do?**

Immediately contact your manager through the Open Door process or contact the Global Ethics Office.

**A customer continues to call me bad names while in my checkout line. What should I do?**

Contact a member of management or the Asset Protection department in your store.

**My manager asks me to pick up some carts each evening on my way to my car. What should I do?**

You should tell your manager you have already clocked out, and it is a violation of company policy for them to ask you to work off the clock.

**My manager has reduced my hours recently because she says we need to cut expenses. Is this a violation of the Wage and Hour section?**

If you want to raise concerns about your hours being reduced, you should exercise the Open Door process by contacting your store, market, or Human Resources manager.





“Personal and moral integrity is one of our basic fundamentals and it has to start with each of us.”

Sam Walton

### Q & A

**I'm a Vision Center regional manager. I've recently invested \$10,000 in an investment fund that may invest some of the money in the optical industry. Would this be a violation?**

Since you don't have direct control over the investment strategy, it's not a violation.

**Someone told me I could not own stock in a vendor. Is this correct?**

No. The restriction is you may not have any direct financial interest in a vendor whose business you have direct or indirect influence over within your position at Walmart. There are no restrictions to financial interests in vendors you do not have business influence over.

**I recently joined Walmart and I own more than \$20,000 of stock in a key competitor. Must I sell this stock?**

You should disclose the information to your manager and the Global Ethics Office. The Global Ethics Office will issue you an opinion with any instructions regarding any potential conflicts of interest.

## Conflict of interest

### General

We have a responsibility to all our stakeholders to make decisions strictly on the basis of Walmart's interests, without regard to personal gain. A conflict of interest can arise when our judgment could be influenced, or might appear as being influenced, by the possibility of personal benefit. Even if it's not intentional, the appearance of a conflict may be just as damaging to your reputation, and Walmart's reputation, as an actual conflict. We should always be on the lookout for situations that may create a conflict of interest, and do everything we can to avoid them.

It's your responsibility to tell your immediate manager about any situation that you think creates, or could create, a conflict of interest. Managers are encouraged to bring the matter to the attention of the Global Ethics Office. They will determine how to handle the situation.

Conflict of interest situations can come up in various ways. The following sections outline some of the possibilities.

### Financial investments

As a representative of Walmart, you have a responsibility to make sure your personal financial activities do not conflict with your responsibilities to the company. A financial conflict of interest can arise when your judgment could be influenced, or might appear as being influenced, by the possibility of personal financial gain.

Examples of conflicting financial investments are:

- Financial interest in a vendor of Walmart, if you have direct or indirect involvement in our business with that vendor.
- Substantial financial interest in a competitor.
- Receiving personal compensation from a vendor, if you have direct or indirect involvement with our business concerning that vendor.
- Using confidential company information for personal gain.

Ownership of stock in a competitor with a market value in excess of \$20,000 must be disclosed in writing to the Global Ethics Office. The Global Ethics Office will decide whether or not a conflict, or potential conflict, exists and how it should be handled.

### Personal relationships with suppliers

Walmart encourages associates not to have social or other relationships with suppliers if the relationship would give the perception that a business influence is being exerted. We believe in basing our relationships with suppliers on efficient, fair and lawful business practices. The selection of suppliers must be made on the basis of objective criteria, including integrity, quality, price, delivery, adherence to schedules, product suitability, maintenance of adequate sources of supply, and Walmart's purchasing practices and procedures. We must treat our suppliers with respect, fairness, and honesty. We must not take undue advantage of a supplier by using Walmart's business influence. Also, we should expect our suppliers to follow all applicable legal requirements in their business practices.

A conflict of interest may exist if a former associate is calling on Walmart in an area in which the associate worked or had influence over while employed at Walmart. The Global Ethics Office will make the determination as to whether a conflict of interest exists.

When a former associate takes a position with, or on behalf of, a supplier, Walmart will not do business with that associate for a period of three (3) years following his or her separation from Walmart if a conflict of interest, as defined above, is determined to exist.

In addition to the restriction described in the preceding paragraph, when a former Walmart officer takes a position with, or on behalf of, a supplier, Walmart will not do business with that former officer for one (1) year following his or her separation from Walmart, regardless of the area in which the former officer was involved at Walmart.

If you believe you may be perceived as having an inappropriately close relationship with a supplier, or appear to be exerting a business influence on the supplier, inform your manager or the Global Ethics Office.

## Q&A

**There's a contracting company I do business with as part of my position with Walmart. They've asked me if I know of an engineer they could hire. My son is qualified and would like to work for this company. May I refer my son for the position?**

No. Even though the contracting company sought your recommendation, it could be interpreted that you are using your position with Walmart to get your son a job. That would be a conflict of interest that could compromise your reputation as a representative of Walmart.

**My next-door neighbor is one of my suppliers. They invited my family and me to a neighborhood party. Would it be a violation of the Personal Relationships with Suppliers policy if we went to the party?**

It would be OK to attend as long as the party is open to the entire neighborhood and you're invited because you're a neighbor, not because of your position with Walmart. Remember to ask yourself, if another supplier or other associates knew of this situation, would it appear you are giving preferential treatment to your neighbor as a supplier?



### Q & A

**Our market electronics team is attending a training session, hosted by a supplier, to understand a new item the supplier is launching. The supplier said we will each get free t-shirts for attending the training. Can we accept the t-shirts?**

Since the t-shirts are coming from the supplier and are not related to the product, and understanding of the product, they cannot be accepted. Politely decline the t-shirt and explain our gifts and entertainment policy to the supplier.

**I'm attending a business training session sponsored by a professional organization. Following the first day of training, the suppliers sponsoring the event are going to provide snacks and drinks at a reception for all attendees at the session. Can I go and have snacks and a drink?**

Yes. Since the reception is open to all attendees, you're not being singled out as a representative of Walmart.

### Gifts and entertainment

Accepting gifts and entertainment can cause a conflict of interest, or the appearance of a conflict between personal interests and professional responsibility. The Walmart culture is to never accept gifts or entertainment from any supplier, potential supplier, government, or any person the associate has reason to believe may be seeking to influence business decisions or transactions. Associates also may not accept a gift or gratuity from a customer for work performed by the associate in a store or club, except as required by local or national policy.

We may not accept items donated to Walmart by suppliers for the purpose of raising funds for charities or non-profit organizations. Also, we should not accept or approve of them making donations on behalf of Walmart.

Our policy of declining all gifts and entertainment stems from our value of maintaining Every Day Low Costs. Since such gifts and entertainment increase the cost of doing business, we help our suppliers to give us low costs on products by not expecting the gifts and entertainment they may have to spend on other customers. We recognize, as a global company, we may encounter situations where local practices will come into play. The Global Ethics Office will review these situations on a case-by-case basis.

When you are establishing a new business relationship, make sure all parties are aware of our policy regarding gifts and entertainment. In some countries where gift giving is a custom or tradition, you should politely explain this policy to your customers and suppliers, especially prior to holiday gift-giving periods, in order to establish expectations. Also, be aware of what policies your suppliers or other business partners may have in place about this issue and take them into consideration.

Occasionally, there may be times when returning a gift would be impractical or embarrassing. In those rare instances, accept the gift on behalf of the company, report it to your manager, and give the gift to the in-country Ethics Committee or the Walmart Foundation. If either of those options are not possible, find a fair way to distribute the gift equally among the members of your department. You should immediately tell your manager or the Global Ethics Office about any gift you've been offered or received if you feel that gift might be a violation of our company's policy. If you have any questions about gifts and entertainment, you should seek assistance from your manager, the in-country Ethics Committee, or the Global Ethics Office.



You should always be aware of how the act of accepting a gift or gratuity might be perceived by the public, by other suppliers, or by other associates. When dealing with external businesses, you should ask yourself, "Would this business be offering me this gift or gratuity if I wasn't employed by Walmart?" If the answer is "no" or is unclear, you should not enter into the transaction.

## Personal relationships with other associates

At Walmart, we want to provide a work environment where associates can perform effectively and achieve their full potential. We are all responsible for creating a climate of trust and respect, and for promoting a productive work environment.

There is a basic conflict of interest when you manage someone with whom you have a family, romantic, or dating relationship. Even if you're acting properly, your relationship will likely be seen as influencing your judgment. This can damage morale and disrupt workplace productivity. Therefore, you may not supervise, directly or indirectly, any family members or any associate with whom you date or are romantically involved. This includes situations where you may be able to influence that associate's terms and conditions of employment, or if that associate can influence the terms and conditions of your employment.

Walmart strives to eliminate personal relationships that interfere with work performance or which may constitute harassment.

You should ask for guidance and advice from your manager or from the in-country Ethics Committee whenever an issue comes up regarding a personal relationship. Your manager or Human Resources manager can discuss options with you, such as a possible transfer to remove the conflict.

## Q & A

**A supplier I work with has offered me two tickets to the World Cup if I pay face value for them. Can I buy the tickets?**

You should decline the offer. Although you may be paying face value for the tickets, it may not necessarily reflect the market value of the item. Some areas allow you to resell tickets, and you might be able to make a profit if you sold them. Also, there could be a gift of prestige in receiving the ability to attend a coveted event, such as the World Cup.

**I'm an assistant manager of a store. Recently, I started dating another assistant manager in my store. Is this OK?**

Since you do not have influence over the other assistant manager's terms of employment, it would not be a violation. We recommend you tell your store manager about the relationship so they would be cautious not to place either of you in a potential conflict situation, such as a temporary assignment of store management duties.



“The strongest bond of human sympathy outside the family relation should be one uniting working people of all nations and tongues and kindreds.

Abraham Lincoln,  
former President

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### Q&A

**I have to travel often for my job. Can I use my company laptop to check my bank account online while I am traveling?**

Yes, as long as it does not interfere with work performance.

**My manager told me when I travel with my laptop I should carry it on the plane with me. Is this really necessary?**

Yes. When traveling with a company-issued laptop, you must carry it on the plane with you. It may not be checked with your baggage. This is necessary to protect the laptop and the information contained on it from theft, loss, misuse, or damage.

### Walmart assets

We have a responsibility to our shareholders to use Walmart property and assets for Walmart business, and not allow them to be used for any type of personal gain. You're responsible for maintaining Walmart property under your control and should take reasonable steps to protect it from theft, misuse, loss, damage, or sabotage.

Where permitted by law, associates have no expectation of privacy as to the use of Walmart communication tools (such as e-mail or voice mail). Walmart has the right to and does monitor communications tools, including the content and usage of such tools.



## Leading with integrity in our marketplace

### Fair competition

Fair Competition laws protect free enterprise by ensuring vigorous competition and prohibiting activities that restrain trade. Fair competition laws vary from country to country, but they commonly prohibit or regulate business practices that would be expected to cause prices of goods or services to be higher, or availability or choices to be less, than would be the case in a competitive market. For example, in some countries, fair competition laws may prohibit or regulate practices such as price fixing and agreements between competitors not to compete in particular markets or businesses. We are committed to doing our part to preserve free enterprise by requiring all associates to comply with fair competition laws. For specific information on local laws such as these, please consult your country's Legal Department.

### Intentional dishonesty

Striving for excellence means operating our business with high integrity, and avoiding deceptive, dishonest, or fraudulent activities. Fraudulent actions are not only unethical, but may also be a violation of law. You should manage your particular area of business with as much transparency as possible. You should encourage a work environment that supports the contributions of your associates, and is based on our company's values and ethics. Acts of fraud or dishonesty are more likely to occur in environments with insufficient controls and unrealistic expectations. In order to maintain excellence in our operations, you should encourage transparency, honesty, and realistic expectations.



### Q & A

**An industry trade association has contacted me about participating in a benchmarking study for members of their association. This seems like a good way to obtain information about our competitors. Should we participate?**

There is nothing wrong with participating in industry benchmarking activities; however, this should not be used as a means to uncover confidential information on competitors.

**My manager told me to markdown several items to zero but leave them on the shelves to sell because it will, "help our inventory." Is this ok?**

Not only is this dishonest, but it could also affect the store's profitability. If you're being instructed to do this, contact management through the Open Door process, Human Resources, or the Global Ethics Office.





“Do the right thing. It will gratify some people and astonish the rest.”

Mark Twain, author

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### Q & A

**An associate near me says she makes adjustments to our financial information so that our “good months” will help out our “bad months.” Could this be an issue?**

The practice of incorrectly recording financial data can have serious consequences both personally and as a company. You should report this immediately to the Global Ethics Office or Internal Audit.

**I have inside information about a product that will be released by another public company. Can I buy that public company's stock?**

Any stock sale or purchase based on inside information is considered insider trading.

**Could I encourage a friend to buy it?**

Encouraging others to purchase would still be considered insider trading and also commonly referred to or known as “tipping.” The friend would be liable for insider trading, if he or she purchased shares as a “tippee,” and you would be liable for insider trading as a “tipper,” even though you did not buy any shares of the public company's stock.

### Financial integrity

Walmart requires honest and accurate recording and reporting of financial information in order to make responsible business decisions. All financial books, records, and accounts must accurately reflect financial transactions and events. They must conform to generally accepted accounting principles, and to Walmart's system of internal controls. No Walmart document or record may be falsified for any reason. No undisclosed or unrecorded accounts of Walmart's funds or assets may be established for any purpose.

### Insider trading

Inside information is any material non-public information that a reasonable investor is likely to consider important when making an investment decision. Common examples of inside information include:

- Projections of future earnings or loss
- News of a significant or pending merger, acquisition, or tender offer
- News of a significant sale of assets, or the disposition of a subsidiary
- Changes in dividend policy, the declaration of a stock split, or the offering of additional securities
- Changes in executive management
- Significant new products or discoveries
- Impending bankruptcy or financial liquidity problems
- Significant lawsuits or legal settlements
- The gain or loss of a significant supplier or customer
- The possible awarding or cancellation of a significant contract to either Walmart or to a supplier

It is illegal to buy or sell stock or other securities on the basis of material, nonpublic (i.e., inside) information. It is also illegal to communicate (or "tip") inside information to others so that they can buy or sell stock or other securities. If you are aware of inside information about Walmart or any other company, including our suppliers or business partners, you are prohibited from trading (directly or indirectly) or tipping others to trade in the stock or other securities of that company. These same restrictions apply to any person who lives in your household or who is financially dependent upon you.

- Never buy or sell the stock or other securities of any company while you have inside information about that company.
- Never recommend that anyone buy or sell the stock or other securities of any company while you have inside information about that company.
- Don't disclose inside information about Walmart to anyone outside of Walmart (including your family members), unless such disclosure has been approved by the Legal Department, and only after the Legal Department has informed you that adequate steps have been taken to prevent misuse of the information.
- Disclose inside information to people within Walmart only on a "need-to-know" basis.

## Restrictive trade practices

We will not participate in any activity intended to restrain trade, or promote a refusal to conduct business with customers, members, or suppliers, in any country where such a refusal would be in violation of applicable law. If you learn of a refusal to conduct business request, or any related request, report it immediately to the Legal Department.

Agents representing Walmart must comply with this policy as well.



## Q & A

**I was told I should boycott one of my suppliers because they conduct business in a certain country. Should I not do business with that supplier?**

Although restrictions are sometimes placed on certain countries and individuals, it's always best to speak to the Legal Department when you're instructed to boycott a supplier or country.





“There are really only two important points when it comes to ethics. The first is a standard to follow. The second is the will to follow it.”

John C. Maxwell, leadership expert

### Q & A

**Local police officers have recently stopped trucks leaving our distribution center and threatened to delay deliveries unless the driver pays \$50 U.S. in cash to the officer. My manager said we should carry \$50 gift cards with us. Is it permissible?**

Walmart policy prohibits even small unofficial payments to government officials to influence government action. This prohibition applies to cash, gifts, or other things of value. Immediately report this matter to the Legal Department or the Global Ethics Office.

**A store is seeking a permit from the local Transport Authority. The store usually gives holiday baskets to various local officials. This year, the store manager suggested including a \$300 gift card in the basket for the head of the Transport Authority. Is this acceptable?**

The policy does not allow the gift because it's something of value and is apparently intended to influence the Transport Authority. The policy does permit certain customary gifts, such as holiday baskets that are of relatively low value and are not intended to influence anyone.

## Leading with integrity in our communities

### Anti-corruption

We believe in fair, free and open markets, and in promoting good government. We do not tolerate, permit, or engage in bribery, corruption, or unethical practices of any kind. Bribery of public officials in the U.S. and abroad is illegal under both U.S. law and the local law of the countries in which we operate. Walmart's policy goes beyond these legal requirements and prohibits corrupt payments in all circumstances, whether in dealings with public officials or individuals in the private sector.

Specifically, the Global Anti-Corruption Policy prohibits us from paying, promising, offering, or authorizing a payment, directly, indirectly, or through a third party, money or anything of value to a government official or political party for the purpose of influencing an official act or decision in order to obtain or retain business or secure an improper advantage. The term "government official" includes any person acting in an official capacity for or on behalf of a government or governmental agency or department, including a business with government ownership (for example, a national oil company); a public international organization (for example, the U.N. or World Bank); or a political party or candidate for political office. Even when local practices or customs allow behavior that violates our Anti-Corruption Policy, it is not acceptable for us to do so.



## Anti-money laundering

We're committed to complying fully with all applicable money-laundering laws throughout the world. We must comply with all applicable laws prohibiting money laundering. Some countries also have laws related to the reporting of cash or other suspicious transactions that we must obey.

Be alert to the following activities:

- The types of payments that have become associated with money laundering, such as: multiple money orders, travelers checks, or large amounts of cash.
- A customer or other third party who is reluctant to provide complete information, provides false or suspicious information, or is anxious to avoid reporting or record-keeping requirements.
- Unusually favorable payment terms or unusual fund transfers to or from foreign countries unrelated to the transaction.
- Structuring a transaction to avoid requirements, such as conducting multiple transactions below the reportable threshold amounts.

You must follow our rules concerning acceptable forms of payment. For further guidance on this topic, please consult with your local Legal Department.



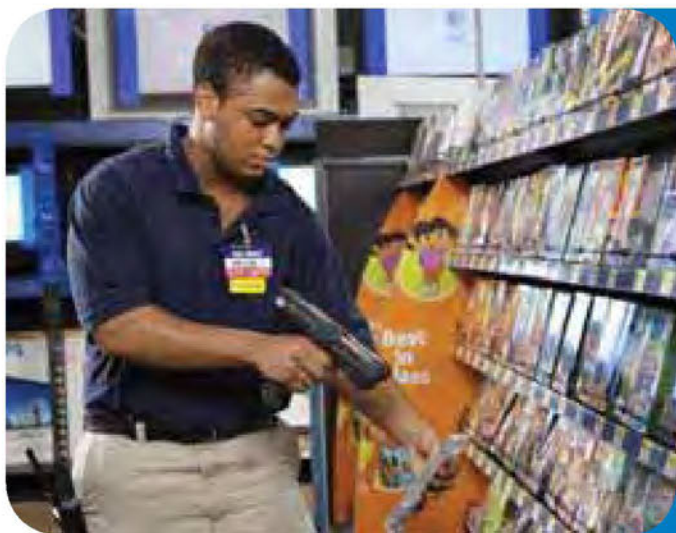
### Q & A

**A customer refuses to provide their address for a \$3,000 money transfer to another country. Should I report this as a "suspicious person"?**

Any customer reluctant to provide requested information should be reported as a "suspicious person" when processing financial transactions.

**A customer asked me if I could split a \$5000 transaction into two transactions of \$2500 so they did not have to bother with the paperwork that may otherwise be involved. Should I process the transaction this way?**

No. If it's truly the same transaction, it should be processed as one transaction and the proper paperwork should be completely filled out and turned in to the Home Office for reporting to the government. If the customer refuses to comply, contact a member of management to assist you.



“ To see what is right  
and not to do it is want  
of courage.

Confucius

”

### Q&A

**Should I report suspected non-authorized workers if they're technically employed by a contractor and not Walmart?**

Yes. We require our contractors to use only work-authorized employees at our facilities. If you suspect there are unauthorized workers at our work sites, please contact the Global Ethics Office.

**What should I do if an associate arrives ready to begin working and they cannot show evidence of work authorization?**

Follow your country's policies regarding employment authorization. This includes verification for new associates as well as visiting associates on an expatriate or transition assignment. For example, under U.S. law an employer must terminate the employment of an employee who is unable to show evidence of work authorization by the third day of work.

### Authority to work

We strive to be good corporate citizens. Therefore, we may not hire, recruit, or refer for a fee, anyone not legally authorized to work in the country in which employment is sought. It is our responsibility to inspect, verify, and document the identity and employment authorization of every new associate, including associates who are international expatriates on assignment in a foreign country. We are also responsible for re-verifying the continuing employment eligibility of each associate by requesting further documentation when the initial work authorization has expired.

All persons we hire or send to a foreign country on an expatriate or transition assignment must provide proper documentation and verification of their authorization to work in the country where they are to be employed.

In complying with immigration laws, it is important to follow our policy against employment discrimination on the basis of national origin or possible citizenship status.

We require all employment agencies, contractors and others doing business with us to fully comply with all immigration laws.



# Environmental, health and safety in the workplace

## Environmental responsibility

We're committed to environmental protection and preservation of our natural resources. We're also responsible for complying with all applicable environmental laws and regulations. This responsibility is one of the core foundations for our environmental sustainability commitment.

Our policy is to conduct our business in a socially responsible and ethical manner that protects the environment of our customers, members, associates, and communities.

## Health and safety

We're committed to the health and safety of our customers, members, and associates, because we care for one another. Conducting our business in compliance with all health and safety laws is crucial to protecting each other from harm. As an associate of Walmart, always comply with all relevant health and safety laws and policies. By following these, we can create and maintain a safe shopping and working environment for our customers, members, and associates.

## Q & A

**An associate spilled a liquid chemical cleaner, wiped up the spill with a towel and threw the towel in the trash and the remaining cleaner down the drain. How should this be handled?**

Once the cleaner was spilled, it became a hazardous waste as well as all materials to clean up the spill. Therefore, the towel must be disposed of as a hazardous waste in the appropriate hazardous waste management bucket. All remaining liquid should be managed as a hazardous waste in the bucket as well. Since this behavior is a violation, report it to a member of management, Human Resources, or the Global Ethics Office.

**The produce manager always leaves the forklift parked in front of the Emergency Exit. Is this a problem?**

Walmart faces fines and liabilities for safety hazards such as blocking or locking fire exits. It is crucial the fire exits be accessible during emergencies.

